



## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

October 12, 2007

### **H.R. 3773 RESTORE Act of 2007**

*As ordered reported by the House Committee on the Judiciary  
on October 10, 2007*

#### **SUMMARY**

H.R. 3773 would modify a number of rules and procedures the government must follow when conducting electronic surveillance. In particular, the bill would amend several sections added to the Foreign Intelligence Surveillance Act (FISA) by the Protect America Act of 2007 (Public Law 110-55). Under H.R. 3773, the government would have to apply to the Foreign Intelligence Surveillance Court (FISC) for authorization to conduct electronic surveillance on non-U.S. persons (individuals who are neither U.S. citizens nor permanent residents) outside the United States in instances when such surveillance could result in the government also obtaining the communications of individuals in the United States.

Several sections of the bill would, if implemented, increase discretionary costs. However, CBO does not have access to the information necessary to estimate the impact on the budget of implementing H.R. 3773. Any changes in federal spending under the bill would be subject to the appropriation of the necessary funds. Enacting H.R. 3773 would not affect direct spending or revenues.

The Unfunded Mandates Reform Act (UMRA) excludes from the application of that act any legislative provisions that are necessary for national security. CBO has determined that section 4 of H.R. 3773, which would authorize certain electronic surveillance without a court order in an emergency situation, falls under that exclusion and has not reviewed it for intergovernmental or private-sector mandates.

Other provisions of H.R. 3773 contain intergovernmental mandates as defined in UMRA, but CBO estimates that any costs to state and local governments would fall well below the annual threshold established in that act (\$66 million in 2007, adjusted annually for inflation).

H.R. 3773 contains a private-sector mandate as defined in UMRA because it requires certain entities to assist the government with electronic surveillance. Because CBO has no information about the prevalence of electronic surveillance and the cost of compliance for private-sector entities assisting the government with electronic surveillance, CBO has no basis for estimating the costs of the mandate or whether the costs would exceed the annual threshold established by UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation).

## **ESTIMATED COST TO THE FEDERAL GOVERNMENT**

The following provisions of H.R. 3773 could require additional appropriations:

- Section 7 would require the Inspector General of the Department of Justice (DOJ) to complete an audit of all programs involving the acquisition of communications conducted without a court order on or after September 11, 2001.
- Section 8 would require the Director of National Intelligence and the Attorney General to jointly develop and maintain a system to document instances when elements of the intelligence community have disclosed the identities of U.S. persons whose communications they have acquired to other departments or agencies of the U.S. government.
- Section 9 would authorize the appropriation of the amounts necessary to provide personnel and information technology for DOJ and the National Security Agency to submit timely applications to the FISC.

CBO estimates that implementing those sections would increase the costs of conducting electronic surveillance, subject to the appropriation of the necessary funds. However, CBO does not have access to the information necessary to estimate the impact of those changes. Such an estimate would require information on the types and volume of surveillance that would be subject to those authorizations, and the current costs incurred by agencies involved in the FISA process.

## **ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS**

The Unfunded Mandates Reform Act excludes from the application of that act any legislative provisions that are necessary for national security. CBO has determined that section 4 of H.R. 3773, which would authorize certain electronic surveillance without a court order in an

emergency situation, falls under that exclusion and has not reviewed it for intergovernmental mandates.

Other provisions of H.R. 3773 contain intergovernmental mandates as defined in UMRA. The bill would protect individuals from lawsuits if they comply with certain federal requests for information. That exemption would preempt some state and local liability laws, but CBO estimates this preemption would impose no costs on state, local, or tribal governments.

The bill also would allow federal law enforcement officers to compel providers of communications services, including public institutions such as libraries, to provide information about their customers and users. Based on information from a recent survey of public libraries, CBO estimates that the number of requests likely would be small and that the total costs to public entities would be well below the annual threshold established in UMRA (\$66 million in 2007, adjusted annually for inflation).

## **ESTIMATED IMPACT ON THE PRIVATE SECTOR**

H.R. 3773 contains a private-sector mandate as defined in UMRA because it requires certain entities to assist the government with electronic surveillance. CBO has no basis for estimating the costs of the mandate or whether the costs would exceed the annual threshold established by UMRA for private-sector mandates (\$131 million in 2007, adjusted annually for inflation).

H.R. 3773 would authorize the Director of National Intelligence and the Attorney General, after obtaining a judge's approval required under the bill, to require certain persons affiliated with a provider of communications services to provide the government with all information, facilities, and assistance necessary to conduct electronic surveillance and to acquire foreign intelligence. Because CBO has no information about how often such entities would be directed to provide assistance or the costs associated with providing assistance, CBO has no basis for estimating the costs of this mandate. The bill also would direct the government to compensate, at the prevailing rate, a person for providing such information, facilities, or assistance.

## **PREVIOUS CBO ESTIMATE**

On October 12, 2007, CBO also transmitted a cost estimate for H.R. 3773 as ordered reported by the House Permanent Select Committee on Intelligence (HPSCI) on October 10, 2007.

The language of the two versions of the bill is similar, though this version of the bill does not contain some provisions included in the version approved by the HPSCI.

The version of the bill approved by the HPSCI would require the Attorney General to develop and maintain a secure, classified document management system for preparing and reviewing submissions to the FISC. In addition, the version approved by the HPSCI contains authorizations for additional personnel for the Office of the Director of National Intelligence and the Foreign Intelligence Surveillance Court. Both of those provisions could make the cost of the version of H.R. 3773 approved by the HPSCI larger than the cost of the version of the bill approved by the Judiciary Committee.

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